



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/573,192

06/24/2008

Peter William Harkins

1223-013

7199

1009 7590 07/07/2010  
KING & SCHICKLI, PLLC  
247 NORTH BROADWAY  
LEXINGTON, KY 40507

EXAMINER

KIRSCH, ANDREW THOMAS

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

07/07/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,192	<b>Applicant(s)</b> HARKINS, PETER WILLIAM	
	<b>Examiner</b> ANDREW T. KIRSCH	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/21/2006 and 9/13/2007</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In re claim 7, Applicant recites "including a metal reinforcement embedded in the side members... and embedded within the side members and/or main panel portion."

Since the limitation recites embedding within the side members twice, it is unclear as to whether there are meant to be another set of side members for embedding, or if this is the same set recited twice. Also, it is unclear whether the metal reinforcement is one piece embedded in both the side members and the main panel portion, or if each of the side members and main panel portion have their own metal reinforcement pieces.

4. In re claim 8, Applicant recites "the pin mounting sleeve" in lines 3 and 4 of the claim. There is insufficient antecedent basis for this limitation in the claims.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

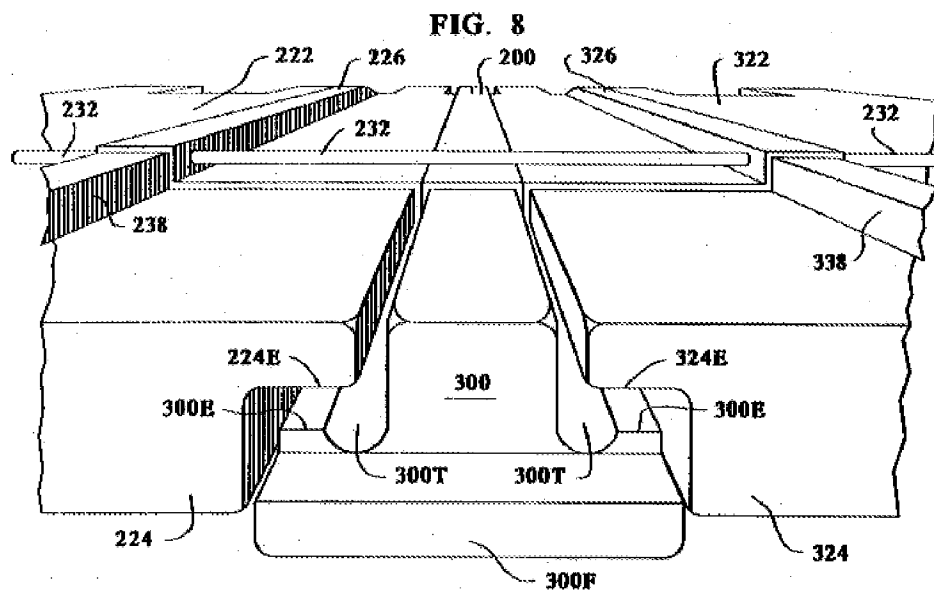
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

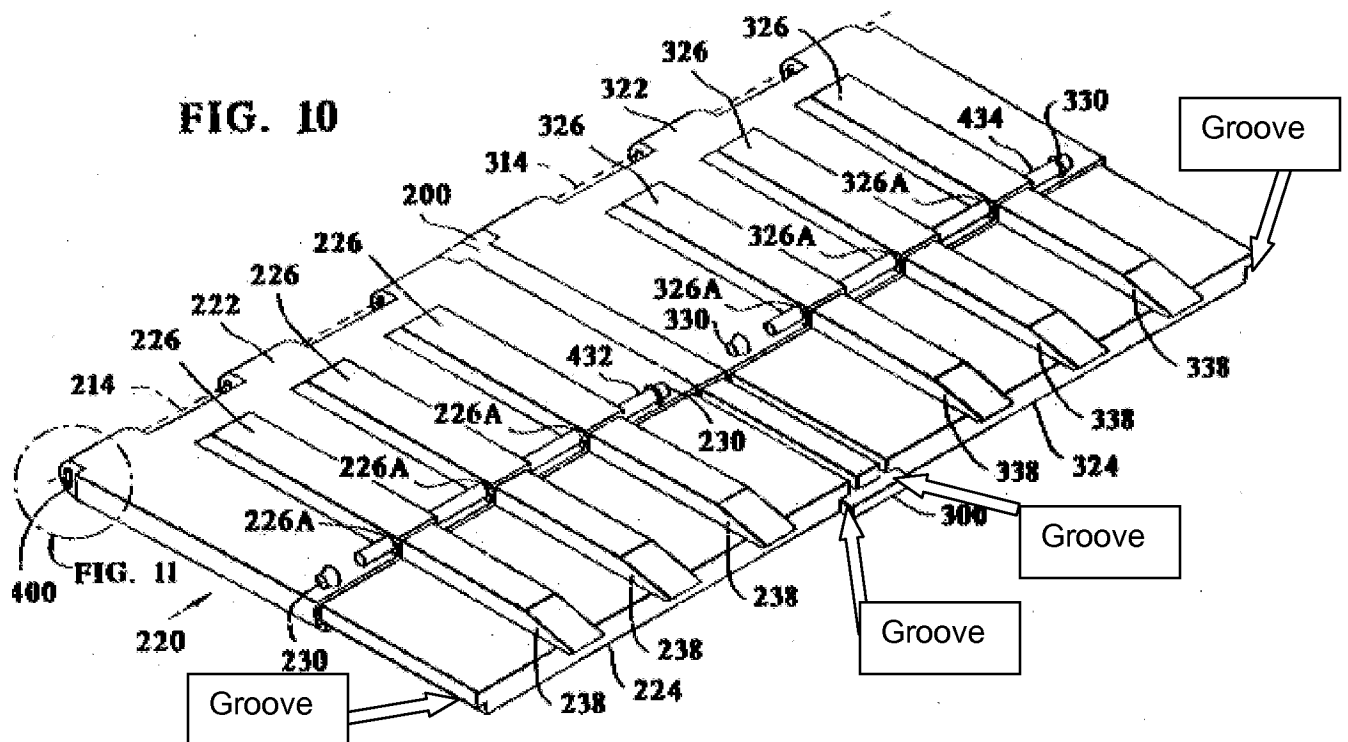
Art Unit: 3781

6. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,244,109 (Mullett et al. hereinafter).

7. In re claim 1, with reference to Figs. 8 and 10 below, Mullett et al. discloses: A closure for a refuse container, the closure including a main panel (200, 300) portion having opposed side edges, the closure further including side members (224, 324), each of which is adapted to be associated with a respective side edge of the main panel portion (see Fig. 8), the side members (222 with 224, and 322 with 324) being of greater rigidity (because the side members are thicker due to 238 and 338, see Fig. 8) than the main panel portion (200, 300), cooperating connector parts (224E, 324E, and 300E) associated with the main panel portion and side members for releasably connecting each of the side members to a respective side edge of the main panel portion (see Fig. 8), and a pivot mounting (400) for pivotally mounting the closure to the refuse container.





8. In re claim 2, with reference to Figs. 8 and 10 above, Mullett et al. discloses the claimed invention including wherein the main panel portion (200, 300) is a generally flat member which is generally rectangular in plan having opposed end ends (at 200, and at 300) extending between the opposed sides, the pivot mounting (400) including a pivot mounting section (400) at one of the ends (at 200).

9. In re claim 3, with reference to Figs. 8 and 10 above, Mullett et al. discloses the claimed invention including wherein each side member (222 with 224, and 322 with 324) of the closure is in the form of an elongated bar shaped element having sides (224E and 324E) which are about the same length of the sides (300E) of the main panel portion (300), each side member including opposed ends (at 222, 224, 322 and 324), and said pivot mounting (400) including a further pivot mounting section (414) at one end thereof.

Art Unit: 3781

10. In re claim 4, with reference to Figs. 8 and 10 above, Mullett et al. discloses the claimed invention including wherein the connector parts include a tongue (300E) and cooperating groove (224E and 324E), the tongue being formed on the main panel portion and the groove being formed on the side members.

11. In re claim 5, with reference to Figs. 8 and 10 above, Mullett et al. discloses the claimed invention including wherein two tongues (300E) are provided one extending along each of the sides of the main panel portion (see Fig. 8 above) and each side member includes two grooves (see Fig. 10 above) each formed in a respective side there, the main panel portion (200, 300) and side member (222 and 224) being connectable together by sliding the tongue into the groove at one end thereof (when unhinged).

12. In re claim 6, with reference to Figs. 8 and 10 above, Mullett et al. discloses the claimed invention including wherein the pivot mounting (400) is in the form of a pin receiving sleeve (414) (see Fig. 9) operatively mounted to the main panel portion (see Fig. 11) and/or the side members.

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3781

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mullett et al.

16. In re claim 7, with reference to the Figs. above, Mullett et al. discloses the claimed invention including reinforcement (432 and 434) embedded in the side members (222 and 322) in the region of the pivot mounting sections (400) and embedded within in the side members.

17. Mullett et al. is silent as to the material of the reinforcement.

18. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed the reinforcements of Mullett et al. of metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Please note that in the instant application, page 5, applicant has not disclosed any criticality for the claimed limitations beyond the obvious advantages which would lead an ordinary skill artisan to choose metal for the reinforcements of Mullett et al.

Art Unit: 3781

19. In re claim 8, with reference to the Figs. above, Mullett et al. discloses the claimed invention including wherein the metal reinforcement (432, 434) is associated with the side members (222 and 322) and includes spaced apart side bars (432, 434) with a sleeve (226A) extending between the side bars at one end thereof the sleeve (226) defining the pin mounting sleeve (inside which the shaft 432 is mounted) and a cross rod (214) extending between the side bars at the other end thereof (the end of 226 closer to the pivot section 400).

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,200,330 to Scott discloses a lid for a container with a wire mesh main panel portion and sheet metal reinforcing side panel portions hinged mounted to the container.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments



Art Unit: 3781

made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02.

The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T. Kirsch/

Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781

Application/Control Number: 10/573,192  
Art Unit: 3781

Page 9